Filed 10/3/03 In re Ray S. CA5

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

In re RAY S., A Person Coming Under the Juvenile Court Law.	
FRESNO COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. A. J., Defendant and Appellant.	F042995 (Super. Ct. No. 01CEJ300306) **O P I N I O N**

THE COURT[*]

APPEAL from a judgment of the Superior Court of Fresno County. Martin Suits, Judge.

Jesse F. Rodriguez, under appointment by the Court of Appeal, for Defendant and Appellant.

Phillip S. Cronin, County Counsel, and Howard K. Watkins, Deputy County Counsel, for Plaintiff and Respondent.

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[*] Before Buckley, Acting P.J., Levy, J., and Cornell, J.

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A.J. appeals from an order terminating her parental rights (Welf. & Inst. Code, § 366.26) to her son, Ray S.[1] She contends the court abused its discretion by denying her petition to place the child with his maternal aunt. On review, we will affirm.

PROCEDURAL AND FACTUAL HISTORY

In July 2002, the Fresno County Superior Court adjudged Ray S., born in September 2001, a dependent child of the court and removed him from appellant's custody. When the child was one-month-old, medical doctors discovered he had suffered a number of non-accidental bone fractures and was emaciated. Respondent Fresno County Department of Children and Family Services (the department) in turn detained the child and initiated these dependency proceedings.

Due to the child's young age and the severe physical abuse he suffered, the court denied appellant and the child's father reunification services pursuant to section 361.5, subdivision (b)(5). The court also set a section 366.26 hearing for December 2002 to select and implement a permanent plan for Ray.

In anticipation of the section 366.26 hearing, the department prepared and submitted an assessment in which it recommended that the court find Ray adoptable and terminate parental rights. Relevant to this appeal the department reported it had placed Ray with prospective adoptive parents on November 1, 2002. Within a matter of days, appellant's infant son would be placed with the same family.[2]

Due to the department's inability to locate and serve Ray's father with notice of the hearing, the court continued the section 366.26 hearing to a date in March 2003. The

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1 All statutory references are to the Welfare and Institutions Code unless otherwise indicated.

2 Appellant's second son, born in July 2002, was a dependent child of the Stanislaus County Superior Court.

court again continued the hearing until mid-April based on a request by appellant's counsel for a contested hearing.

Days after the March 2003 continuance, appellant's counsel petitioned under section 388 for a change in Ray's placement, specifically to his maternal aunt's home. According to the petition, the aunt had requested placement of Ray and his younger sibling since 2002 and had completed a "live scan and a home evaluation" but to no avail. The change in placement allegedly would be in Ray's best interest because he would benefit from being adopted by and having a relationship with the biological family.

The department submitted a status review report in opposition to appellant's section 388 petition. The department acknowledged that the aunt requested placement of appellant's newborn child in August 2002. The aunt's request led Stanislaus County and the department to collaborate on evaluating placement of both children with her. The two counties also gave the aunt two months to complete the home evaluation process but she did not make herself available to complete the home evaluation. Consequently, the department placed Ray with his risk-adopt family on November. The aunt did not contact the department until February 2003. Even then the department completed an evaluation of the aunt's home but still opposed a change in placement. The department reasoned that the aunt had two small children of her own, worked full time, and relied on her mother and grandmother to provide day care. In the department's estimation, the aunt would struggle to meet the needs of all the children if she obtained placement. Also, Stanislaus County had decided not to move appellant's other child. The department believed Ray should remain placed with his sibling and added it would be detrimental to sever their sibling relationship. Finally, the department reported that the aunt never had any contact with Ray.

The court conducted an evidentiary hearing on the section 388 petition in April 2003. The aunt testified she received paperwork regarding herself which she completed in September and submitted additional paperwork about her babysitter in October. She

then made herself available for the home evaluation by Stanislaus County but the Stanislaus County social worker never appeared. The aunt tried to reschedule but essentially played phone-tag with the Stanislaus County authorities into November and did not contact the department in Fresno County until February. She claimed Ray's social worker told her that she (the social worker) was unaware of the aunt's request for placement. The social worker nevertheless completed the evaluation process by the end of February.

Following argument, the court denied the section 388 petition and proceeded to find Ray adoptable and terminate parental rights.

DISCUSSION

Appellant contends the court abused its discretion by denying her section 388 petition such that we should reverse the order terminating parental rights. As discussed below, we disagree.

First, appellant lacks standing, a jurisdictional requirement, for our review of her claim. (*Marsh v. Mountain Zephyr, Inc.* (1996) 43 Cal.App.4th 289, 295.) Although a parent generally can appeal judgments or orders in juvenile dependency matters (*In re Carissa G.* (1999) 76 Cal.App.4th 731, 734), a parent must also establish he or she is a "party aggrieved" to obtain a review of a ruling on the merits. (*Ibid*.) Consequently, a parent cannot raise issues on appeal from a dependency matter that do not affect his or her own rights. (*In re Devin M.* (1997) 58 Cal.App.4th 1538, 1541.) The issue of Ray's placement at this stage of the proceedings did not affect appellant's rights. The child was adoptable and, even if relative placement had been appropriate, it would not have prevented the court from proceeding to terminate parental rights. (See § 366.26, subd. (c)(1).)

Second, assuming arguendo that appellant has standing, we would not hesitate to affirm the denial of her section 388 petition. Whether a juvenile court should modify a previously made order (in this case, the order for foster care placement) rests within its

discretion and its determination may not be disturbed unless there has been a clear abuse of discretion. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318.) On this record, we find no abuse of discretion. In addition to showing changed circumstances, appellant had the burden of proving Ray's best interests would be advanced by her request. The court could properly find that a change in placement at this stage would not promote Ray's best interests. Ray's relationship with his aunt was strictly biological; the aunt never had any contact with Ray. Also, a change in Ray's placement would take him away from his younger brother with whom he had lived for approximately six months. Further, the aunt already had two small children of her own, was a single mother who worked full time, and relied on others for child care. Finally, at this point in the proceedings, the court needed to focus on Ray's need for permanency and stability. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 309.) In fact, there is a rebuttable presumption by the time of the section 366.26 hearing that continued foster care is in the best interests of the child. (*Id*., at p. 302.)

Accordingly, we find no error.

DISPOSITION

The order terminating parental rights is affirmed.